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POSSIBILITIES FOR EVALUATION AND REFORM: SUGGESTED USES OF THE NATIONAL INVENTORY OF COLLATERAL CONSEQUENCES OF CONVICTION DATABASE

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Author's Note: *Findings and conclusions reported in this article are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice.*

Introduction

Collateral consequences prohibit and restrict the rights, benefits, and opportunities of people with prior criminal convictions. Unlike the sanctions delivered in criminal court and implemented by the correctional system, collateral consequences are civil in nature and outside the traditional purview of the criminal justice system.² While the number of convictions and laws imposing collateral consequences has risen dramatically in recent

years,³ we still know little about their impact on the offender or their effectiveness in preventing future crime. What we do know, however, is that collateral consequences have the potential to touch on nearly every aspect of civil and social life, including key drivers of desistance from crime, such as gainful employment and pro-social relationships⁴. We also know that not all applicable collateral consequences are readily apparent to the criminal justice system, the accused, and the public at the time of plea hearings and sentencing.⁵ Given current levels of incarceration and recidivism, we need to be strategic about the sanctions we impose to promote justice and public safety, meet the needs of the offender post-release, and encourage desistance from future crime.

We acknowledge that some collateral consequences are necessary for public safety. There is an obvious need to bar potentially dangerous, predatory, and violent individuals from using their job or residence to engage in further criminal activity. Some types of restrictions may be theory-driven or just common sense. Using the terminology of the popular Routine Activities Theory (RAT), states and localities were preventing situations and environments where susceptible victims and

¹ The authors would like to thank Angela Moore, Division Director, Justice Systems Research Division; Ted Robinson, NIJ Office of Communications; Jerome Galang, NICCC Fellow, American Bar Association; and Gary Shaw, NICCC Fellow, American Bar Association.

² Jeremy Travis, *Invisible Punishment: An Instrument of Social Exclusion*, in *Invisible Punishment: The Collateral Consequences of Mass Incarceration* 1, 15 (Marc Mauer & Meda Chesney-Lind eds., 2002); Tracy Sohoni, *The Effect of Collateral Consequence Laws on State Rates of Returns to Prison* 21-23 (2013) (unpublished Ph.D. dissertation, University of Maryland) (on file with DRUM, Univ. of MD) available at <http://hdl.handle.net/1903/14915>.

³ Unif. Collateral Consequences of Conviction Act Prefatory Note (amended 2010) (hereinafter UCCCA).

⁴ See Sohoni, *supra* note 1, at 40-47; David Kirk, *A Natural Experiment on Residential Change and Recidivism: Lessons from Hurricane Katrina*, 74 Am. Soc. Rev. 484, 486 (2009).

⁵ Travis, *supra* note 1, at 17.



DISTRICT OF COLUMBIA

10-5

| Offense | Title | Triggering Offense Category | Consequence Type | Duration Category |
|------------|---|--|-------------------------|--|
| 21-11-0001 | Ineligible for portable identification (director of business corporation) | Any felony; Any misdemeanor | Discretionary | Permanent/Unspecified |
| 22-01-0001 | Deny/suspend/revoke housing choice business license | Crimes involving fraud, dishonesty, misrepresentation or money laundering | Discretionary | Permanent/Unspecified |
| 22-01-0002 | Ineligible to serve as a firm in a role (housing choice case/background check) | RAA (background check, general relief) | Background Check | RAA (background check, general relief) |
| 22-01-0003 | Terminate housing choice voucher program assistance | Any felony; Any misdemeanor; Crimes involving fraud, dishonesty, misrepresentation or money laundering; Public corruption offenses | Discretionary | Permanent/Unspecified |
| 22-01-0004 | Terminate family participation in the housing choice voucher program (possession of any adult household member) (mandatory for nonviolent felonies offenses) | Crimes of violence, including "person offenses"; Controlled substances offenses; Sex offenses | Mandatory/Discretionary | Permanent/Unspecified |
| 22-01-0005 | Terminate family participation in the housing choice voucher program (possession of any adult household member) (discretionary for specified crimes of violence/sex offenses) | Crimes of violence including "person offenses"; Weapons offenses; Controlled substances offenses; Sex offenses | Discretionary | Specific Term |

motivated offenders may come in contact.⁶ Yet the effectiveness of such restrictions is suspect, given the increasing number of consequences enacted through various processes (legislative statute, regulations, and policies). Currently, many judges, prosecutors, and defense counselors do not know what collateral consequences are triggered by a conviction for the offense, let alone how long the restriction applies and how it can be removed.⁷ Applying a myriad of unknown restrictions to a broad classification of individuals, regardless of their violent or predatory nature, is in and of itself suspect. Therefore, the effectiveness of these policies must be questioned as well. Similar correctional practices that applied policies to whole classes of offenders have been abandoned in favor of a more individualized approach.⁸ Yet there is no data collected on how these consequences are applied—let alone any systematic way of knowing when a consequence is triggered by an offense.

6 Lawrence E. Cohen & Marcus Felson, *Social Change and Crime Rate Trends: A Routine Activity Approach*, 44 Am. Soc. Rev. 588, 589 (1979).

7 UCCCA § 4 cmt.

8 See Edward J. Latessa et al., *Beyond Correctional Quackery—Professionalism and the Possibility of Effective Treatment*, 66(2) Fed. Probation, 43 (2002).

Furthermore, it becomes very difficult to impose the appropriate consequence to those who pose a danger to the public while providing relief from the consequence for those who are reentering society following a conviction, but are not a likely threat to the general public.

The public should be wary of imposing restrictions on a class of people when scant evidence exists to help guide these decisions; especially since so many of the restrictions impact key opportunities necessary to successful societal reentry. Since these consequences are enacted separately and not as an integrated system to address public safety concerns, the combination of distinct consequences create a class of disadvantaged individuals based solely on a prior felony (or in some cases a misdemeanor) conviction.⁹ Nevertheless, these individuals are expected to integrate successfully back into society post conviction. Through research and program evaluations, the criminal justice system has taken great measures to improve the methods of assessing risk for future offending, and also delivering quality supervision to the

9 Christopher Uggen et al., *Citizenship, Democracy, and the Civic Reintegration of Criminal Offenders*, 605 Annals, AAPSS 281, 296-97 (2006).



convicted that relies on both monitoring and treatment.¹⁰ We have not, however, paid equal attention to the role and purpose of collateral consequences that impact the lives and opportunities of the formerly convicted.

While there has been ambiguity over the exact number of restrictions a specific conviction would trigger, as well as the mechanisms with which they were to be applied and discontinued, there now exists a real-time, online resource that details all statutory and regulatory collateral consequences for all 50 states, the federal government, and most federal territories.¹¹ Thanks to a five-year partnership between the National Institute of Justice (NIJ) and the American Bar Association (ABA), over 44,000 separate consequences have been documented and catalogued within the National Inventory of Collateral Consequences of Conviction (NICCC).¹² The NICCC is a database that attempts to collect and catalogue all collateral consequences enacted in a jurisdiction's code of laws and regulations in a readily searchable online medium. This database will assist numerous stakeholders within the criminal justice system—legislatures, courts, defense attorneys, prosecutors, judges, people with conviction histories, and their families—in evaluating, considering, and understanding the effects of collateral consequences.

The NICCC is the first-step in systematically reviewing collateral consequences to consider revisions such that restrictions should be imposed only to those who pose the greatest threat to specific public safety concerns. Understanding the breadth of collateral consequences is crucial to enacting reforms that would identify overly burdensome restrictions that have limited utility for public safety. The NICCC is also a critical component of the more robust attempt at rectifying

collateral consequences to date: the Uniform Collateral Consequences of Conviction Act (UCCCA), promulgated by the Uniform Law Commission.¹³ As opposed to leaving the convicted to face a number of restrictions enacted by multiple entities, the UCCCA contains provisions to inform the court and the accused of the collateral consequences that a specific conviction will entail.¹⁴ The UCCCA aims to provide relief from the conviction for purposes of reintegrating the convicted back into society as early as the sentencing phase,¹⁵ as well as to ensure that only legislative statutes can create a collateral consequence.¹⁶

The National Inventory of Collateral Consequences of Conviction

The UCCCA requires that states compile and catalogue all consequences in their jurisdiction to help inform the accused of these restrictions before a plea is made.¹⁷ However, the massive scope of this requirement limited broad adoption of the UCCCA. Congress stepped in to support the review of collateral consequences as proposed by the UCCCA, and passed the Court Security Act of 2007, which authorized NIJ to commission a study that would identify all of the collateral consequences of a criminal conviction in every jurisdiction within the United States.¹⁸ In 2009, NIJ awarded a grant to the ABA Criminal Justice Section to compile a database that could be used by the public, policymakers, and criminal justice system stakeholders to make informed decisions about collateral consequences in their jurisdiction and to consider adoption of the UCCCA.

The crafters of the UCCCA rightfully claimed that there needed to be a sustained effort to identify and compile all collateral consequences. While it appeared the intent of the NIJ solicitation that funded the NICCC

10 See D.A. Andrews et al., *The Recent Past and Near Future of Risk and/or Need Assessment*, 52(1) Crime & Delinquency 7, 20 (2006).

11 Am. Bar Assoc. Nat'l Inventory of the Collateral Consequences of Conviction, <http://www.abacollateralconsequences.org> (last visited March 26, 2015).

12 *Id.*

13 See generally UCCCA.

14 UCCCA § 4-6.

15 *Id.* at § 10.

16 *Id.* at § 7.

17 See *id.* at § 4.

18 See Court Security Improvement Act of 2007, Pub. L. No. 110-177, 121 Stat. 2534, § 510.



was to inform policymakers of the collateral consequences in their jurisdictions, the real-time database also allowed for timely delivery of information about what the defendant will face both at plea hearings and sentencing—making NICCC a vital resource. NICCC provides a real-time research-to-practice translational interface, because under the UCCCA collateral consequences are identified and relief of particular barriers to reentry can occur at sentencing.¹⁹ The NICCC can help the accused and their counsel, the prosecutor, and the judge determine what collateral consequences are, what collateral consequences should be lifted, and what must be applied based on the unique circumstances of the offender in regards to promoting public safety. Yet while the NICCC fulfills this key requirement of the uniform act and advances justice by providing more timely information to criminal justice stakeholders and the accused, it may also serve as an important tool for researching the impact of collateral consequences as well. Beyond the potential impact of the NICCC, the database may also be influential beyond its original intention under the UCCCA.

In this article, we will discuss how the ABA partnered with NIJ to create the NICCC database, and how it may be used to study, consider, and evaluate collateral consequences and reform efforts such as the UCCCA. We will then explore how collateral consequences may disrupt key avenues for socioeconomic mobility, and how this aggregate effect may systematically disadvantage neighborhoods that have disproportionately high rates of incarceration. Finally, we propose a prospective evaluation of the UCCCA using the NICCC database.

As previously noted, the UCCCA mandates that all accused be notified of the collateral consequences that a conviction entails.²⁰ The NICCC can be a useful tool for jurisdictions that enact the UCCCA, but the impact of the NICCC is broader than solely the UCCCA. The ability to access an electronic and searchable database

allows for assistance in researching collateral consequences as well. After addressing the individual application of the NICCC, we will discuss two potential research designs that could be assisted using the NICCC. One is an analysis of the neighborhood-level impact of collateral consequences in terms of the employment opportunities of its residents and another is a prospective evaluation of the UCCCA.

Utility of the NICCC Database

The NICCC represents the first effort on the part of NIJ to assist in the compiling of an open, online data source that fills a direct informational need for the field. Two ideals the criminal justice system consistently seeks to achieve are increased transparency and efficiency. With the NICCC database, NIJ has provided a resource the promotes both ideals, by providing timely information not only to NIJ's typical constituencies of policymakers, practitioners, and the accused, but also to any interested member of the public, especially those with a criminal conviction. But, online, real-time databases are a different and perhaps emerging NIJ can fulfill its mission to support state, local, and tribal criminal justice agencies with research and development.²¹ While NIJ constantly explores new ways to inform the criminal justice system with sound and rigorous research through dissemination and translation, the NICCC can be directly translated into practice by any judge that accesses the database.

In a sense, the NICCC represents a direct translation of research to practice: moving beyond applied research to filling an informational void—it was previously unknown how many collateral consequences are triggered by a conviction, how they were applied, and how they may be relieved—that inhibited the enactment of comprehensive policy. The exact impact of NICCC has yet to be realized; but if it successfully aids in the widespread

¹⁹ UCCCA § 6, 10.

²⁰ *Id.* at § 5.

²¹ See e.g., National Institute of Justice, Mission, <http://nij.gov/about/Pages/welcome.aspx> (last visited March 26, 2015).



implementation of the UCCCA or is used by researchers to study collateral consequences, it may be influential to NIJ in considering the development of additional informational databases. Consequently, it is incredibly important that initially all visitors to the website and users of the database provide feedback—what aspects are helpful, what improvements would make the database more accessible, etc. By the end of the award period, the ABA will create a final report that will examine this information and based on web data and statistics, be able to have a preliminary sense of the response to the database from the field.

Evaluating Individual Collateral Consequences

Collateral consequences pose major obstacles to re-integration and reentry of convicted persons, and general recidivism.²² While many collateral consequences protect legitimate public interests (i.e., public safety concerns), others may be so broadly constructed or perpetually imposed that they become punitive in application and negative in societal effect—increasing social costs and recidivism rates. For instance, approximately 78 percent of all collateral consequences (34,387 of 44,103) relate to employment, professional licensure, and business licensure. Until recently, the ability to evaluate the effects of collateral consequences has been very limited. The NICCC database presents a unique opportunity to study the effects of collateral consequences on a state, federal, and nation-wide level to encourage appropriate reform efforts.

The strength of the NICCC database comes from a systemic approach to coding and identifying collateral consequences across jurisdictions. For purposes of constant and consistent identification of collateral consequences, the NICCC project uses the definition of a collateral consequence as provided in the Court Security Act:

(d) DEFINITIONS.—In this section:

(1) COLLATERAL CONSEQUENCE.—The term “collateral consequence” means a collateral sanction or a disqualification.

(2) COLLATERAL SANCTION.—The term “collateral sanction”—

(A) means a penalty, disability, or disadvantage, however denominated, that is imposed by law as a result of an individual’s conviction for a felony, misdemeanor, or other offense, but not as part of the judgment of the court; and

(B) does not include a term of imprisonment, probation, parole, supervised release, fine, assessment, forfeiture, restitution, or the costs of prosecution.

(3) DISQUALIFICATION.—The term “disqualification” means

a penalty, disability, or disadvantage, however denominated, that an administrative agency, official, or a court in a civil proceeding is authorized, but not required, to impose on an individual convicted of a felony, misdemeanor, or other offense on grounds relating to the conviction.²³

Some critics identify the focus on legally mandated sanctions or disqualifications as minimizing the social and personal effects

²² See generally Gabriel J. Chin, *The New Civil Death: Rethinking Punishment in an Era of Mass Conviction*, 160 U. Pa. L. Rev. 1789 (2012).

²³ Court Security Improvement Act of 2007, Pub. L. No. 110-177, 121 Stat. 2534, § 510 (2008).



of a criminal conviction, which may also be considered a “collateral consequence” of a criminal conviction.²⁴ However, for the purposes of the NICCC database, where the emphasis must be searchable legislative activity, this definition permits consistent identification of a collateral consequence.

The definition highlights some fundamental ways in which collateral consequences may be categorized, certainly for identification purposes, but likely for further research based upon legislature-enacted consequences. Two distinctions suggested by the definition reveal a difference between “sanctions” and “disqualifications.” The former is automatically imposed by force-of-law and the latter is imposed at the discretion of a government stakeholder. Here, there exists a difference in how the consequence is imposed, and in who imposes the collateral consequence. Another crucial element that distinguishes collateral consequences from more conventional penalties in the criminal justice system is that separate authority or action from the original criminal proceeding is required.²⁵ These differences serve to highlight that idiosyncratic variation in statutory construction across jurisdictions will necessarily create differences among these jurisdictions. Nevertheless, it also suggests that cross-jurisdictional comparisons may be possible as a result of the consistency of the NICCC database across jurisdictions.

Future research could benefit from consulting the NICCC Coding Manual. There are definitional and project-identification choices that represent important limitations

on future research based on the NICCC database. One of the important limitations was an early project decision to exclude laws that are triggered by “good moral character” requirements that did not include a specific criminal behavior element. This difficult decision was ultimately made to limit the database only to collateral consequences that absolutely complied with the Court Security Act definition. Other limitations may occur with respect to triggering offenses, such as collateral consequences triggered by “crimes of moral turpitude,” which do not have consistent interpretation among jurisdictions. Despite these limitations, the NICCC database remains an incredibly useful tool that can help develop the backbone for future research projects, however subsequently constructed, to consider collateral consequences and their effects.

Complaints regarding collateral consequences typically focus on three characteristics of laws that impose collateral consequences and three discrete components of the application of those collateral consequences. Hallmarks of inappropriate collateral consequences are those in which (1) the disqualifying crime is not related to the right or benefit deprived²⁶, (2) the term of deprivation is indefinite²⁷, and (3) the imposition of the deprivation is automatic²⁸. What underlie these complaints is that they are inherently unfair.

The NICCC database provides figures related to these problems. Almost 20,000 collateral consequences are triggered by any offense, felony, or misdemeanor, which suggests that approximately 44 percent of all collateral consequences may suffer from the lack of relationship between the crime convicted and the opportunity deprived. Over 31,000 collateral consequences (approximately

24 Cf. Michael Pinard, *An Integrated Perspective on the Collateral Consequences of Criminal Convictions and Reentry Issues Faced by Formerly Incarcerated Individuals*, 86 B.U.L. Rev. 623 (2006); Adina M. Thompson et al., *After Exoneration: An Investigation of Stigma and Wrongfully Convicted Persons*, 75 Alb. L. Rev. 1373 (2011-12) (discussing stigma associated with a conviction history).

25 See Colleen F. Shanahan, *Significant Entanglements: A Framework for the Civil Consequences of Criminal Convictions*, 49 Am. Crim. L. Rev. 1387, 1403 (2012) (noting overlaps between penalties and sanctions—specifically deportation, which suggests an evolution in how collateral consequences are viewed).

26 E.g., David J. Norman, *Stymied by the Stigma of a Criminal Conviction: Connecticut and the Struggle to Relieve Collateral Consequences*, 31 Quinnipiac L. Rev. 985, 996-98 (2013).

27 E.g., *id.*

28 E.g., Nora V. Demleitner, *Preventing Internal Exile: The Need for Restrictions on Collateral Sentencing Consequences*, 11 Stan. L. & Pol’y Rev. 153, 154 (1999).



71 percent) may last indefinitely or for an unspecified term. Approximately 50 percent of all collateral consequences require imposition of a collateral consequence by operation of law with more than 22,000 automatically imposed by statute or regulation.

Compounding the unfairness in construction of some collateral consequences is the manner of imposition. First, notification of the potential adverse result of a criminal conviction is typically lacking.²⁹ Second, relief is rarely an effective remedy.³⁰ Third, even in situations where discretion is granted by law, it is rarely exercised in practice.³¹

Most efforts at reform focus on these deficiencies and attempt to remedy these problems with some combination of seven approaches:

1. Create or expand expungement and sealing remedies.
2. Issue certificates of recovery/relief.
3. Allow for offense downgrades.
4. Build relief into the criminal justice system.
5. Ameliorate employment-related collateral consequences.
6. Improve access to information.
7. Mitigate specific collateral consequences.³²

The most comprehensive of these efforts at reform is the UCCCA, drafted and

promulgated by the Uniform Law Commission.

The UCCCA is comprised of 18 sections that taken together attempt to fix the problems of collateral consequences facing people with convictions in a framework that is politically defensible. The key provisions address notice, authorization, disqualification standards, effects of relief generally, and specific relief.³³ Some writers have identified several deficiencies with the Act,³⁴ and notably, the only state to adopt the UCCCA is Vermont.³⁵

Broadly speaking, there are two basic study models to evaluate collateral consequences: the first being an examination of each law and regulation that imposes a collateral consequence and measured against an acceptable rubric; the second, a multi-year study to determine the potential impact of collateral consequences (and reform measures) on a state- or nation-wide level. The NICCC database can be used to conduct this research and allows the possibility of cross-jurisdiction comparison. What follows are preliminary suggestions and limited examples applying these propositions.

Suggested Methods for Evaluating Specific Statutes and Regulations that Impose Collateral Consequences

Many collateral consequences appropriately and justifiably protect the public. However, these laws and regulations, even passed with the best of intentions, may be unfair in construction. Jurisdictions looking to evaluate its use of collateral consequences should examine each consequence and ask the following questions:

- (1) Is there a justifiable relationship between the crime committed and the restricted benefit?

29 Jenny Roberts, *Ignorance Is Effectively Bliss: Collateral Consequences, Silence, and Misinformation in the Guilty-Plea Process*, 95 Iowa L. Rev. 119, 178-79 (2009).

30 Margaret Colgate Love, *Paying Their Debt to Society: Forgiveness, Redemption, and the Uniform Collateral Consequences of Conviction Act*, 54 How. L.J. 754, 774-79 (2011).

31 See Kimberly R. Mossoney & Cara A. Roecker, *Ohio Collateral Consequences Project: Executive Summary*, 36 U. Tol. L. Rev. 611, 618 (2005); Michael Pinard & Anthony C. Thompson, *Offender Reentry and the Collateral Consequences of Criminal Convictions: An Introduction*, 30 N.Y.U. Rev. L. & Soc. Change 585, 594 (2006).

32 Ram Subramanian et al., *Relief in Sight? States Rethink the Collateral Consequences of Criminal Conviction, 2009-2014*, 2014 Vera Inst. Just., Ctr. on Sentencing and Corr. 11, 15.

33 Uniform Law Commission, *Collateral Consequences of Conviction Act Summary*, <http://www.uniformlaws.org/ActSummary.aspx?title=Collateral%20Consequences%20of%20Conviction%20Act> (last visited Mar. 25, 2015).

34 See Stephen A. Saltzburg, *Amending the Uniform Collateral Consequence of Conviction Act*, CRIM. L. PRAC., Summer 2015, at 33-34.

35 Uniform Law Commission, <http://www.uniformlaws.org/Act.aspx?title=Collateral%20Consequences%20of%20Conviction%20Act> (last visited Mar. 25, 2015).



- (2) Is the period of disqualification appropriate for the crime and the restricted benefit?
- (3) Is the benefit and potential harm so great as to justify mandatory imposition?
- (4) Is specific relief available?

Special care and attention should be given to laws and regulations that apply to benefits related to basic needs, for example, housing subsidies, food stamps, and similar social welfare programs. Revising laws based upon this sort of review would begin a process to alleviate some of the problems facing those with a conviction history.

Obviously, there are additional factors to consider when examining the state of collateral consequences within a specific jurisdiction, such as determining the availability and effectiveness of relief provisions provided by law. Studies related to the manner of imposition of the disqualification may be undertaken, for example, by determining the likelihood that discretion, though granted by law, is exercised, or the treatment of people with convictions by private employers.

Use of NICCC in Research on Impact of Collateral Consequences

As discussed above, two major problems with collateral consequences were that there was little way of knowing all the consequences that accompany a specific conviction and the lack of research examining how collateral consequences impact offenders and promote public safety. While the partnership between NIJ and the ABA aims to meet the critical need for policymakers and criminal justice practitioners to act on and implement key provisions of the UCCCA, the NICCC database of collateral consequences also provides a unique tool for the research community and policy think-tanks to assess the impact of collateral consequences, and provide baseline data for a prospective evaluation of the UCCCA.

As collateral consequences represent a hidden form of punishment, until recently it has been difficult to assess the impact of these consequences on offenders and the larger community.³⁶ One notable attempt to empirically assess the impact of collateral consequences on offender reentry was Dr. Tracy Sohoni's NIJ-funded dissertation that examined different categories of collateral consequences' impact on state-level recidivism. While the findings from her exploratory analysis were mixed, she acknowledged that her data may have been limited as it only captured the number of collateral consequence enacted by statute.³⁷ Dr. Sohoni relied on an analysis of state laws regarding collateral consequences from the Legal Action Center. While this served as a valuable resource for the analysis of the effect of collateral consequences, it was not an exhaustive catalogue of the amount of collateral consequences contained within statutes, regulations, and rules.³⁸ As the ABA's effort to catalogue all state-level collateral consequences was underway at the time Dr. Sohoni was finishing her dissertation³⁹, this more exhaustive database was not yet available.

Research on Local Impact of Collateral Consequences

Following Dr. Sohoni's recommendations to examine local implementation of these laws,⁴⁰ researchers could use the NICCC database to look at individual restrictions on particular career licensures, certifications, and residency prohibitions. Researchers can also interview members of licensure and certification boards, local employers, and housing authorities to see if they are aware of the collateral consequences that apply to their domains, and how these restrictions are implemented.⁴¹ Since criminal justice practitioners may not know of all the

36 Sohoni, *supra* note 2, at 21-23.

37 *Id.* at 136.

38 *Id.* at 53-54.

39 *Id.* at 53.

40 *Id.* at 136.

41 See Norman, *supra* note 25, at 992-1005.



consequences that a conviction entails, it is not clear that civil authorities and employers know all of the pertinent restrictions related to collateral consequences, or when new consequences are added or existing consequences are changed or removed.

Looking at the community—and neighborhood—level impact of collateral consequences may help better reveal their cumulative impact. Collateral consequences may interact to create a class of former offenders set apart from others in the community.⁴² If this is the case, it will likely be more apparent at the local level. Given that incarceration rates fall disproportionately on different communities—especially minority communities⁴³—it follows

disproportionately as well. Thus collateral consequences will not only interfere with an offender's ability to reenter the community, but also the social capital of neighborhoods where incarceration is common.⁴⁴

Researchers can conduct community surveys in neighborhoods to assess criminal histories, examine employment practices and opportunities available to residents. This type of analysis could follow a design similar to the Project on Human Development in Chicago Neighborhoods. Instrumental to this study would be community corrections practitioners, who often have an intimate knowledge of the opportunities available to formerly convicted residents within their jurisdiction. While the

NICCC may have limited use in this type of study, a more robust analysis of neighborhood characteristics and collateral consequences in metropolitan areas that border or encompass two or more state boundaries can leverage the NICCC as a way to compare not only the consequences in various jurisdictions, but also the implementation and impact on neighboring urban jurisdictions.

Potential for a Prospective Evaluation of the UCCCA

As noted by Dr. Sohoni, a state-level analysis examining the impact of collateral consequences may be limited.⁴⁵ There is, however, the potential for a more robust and dynamic

natural experiment as states adopt the UCCCA. We discussed earlier that criminal law practitioners and the accused benefit from the NICCC by its real-time information for reentry relief of collateral consequences under the UCCCA. The UCCCA is based on the premise

⁴⁴ Rose, *supra* note 43.

⁴⁵ Sohoni, *supra* note 2, at 136.

| Code | Offense | Eligibility | Discretionary | Permanent/Unspecified |
|-----------------------|--|--|---------------------|--|
| D.C. Code § 20-206.01 | Ineligible for permissible indemnification (director of business corporation) | Any felony; Any misdemeanor | Discretionary | Permanent/Unspecified |
| UCCCA 14-5001 | Deny/suspend/revoke housing basic business license | Crimes involving fraud, dishonesty, misrepresentation or money-laundering | Discretionary | Permanent/Unspecified |
| UCCCA 14-5007 | Ineligible to serve as a live-in aide (housing/health care/background check) | N/A (background check, general relief) | Background Check | N/A (background check, general relief) |
| UCCCA 14-5003 | Terminate housing choice voucher program assistance | Any felony; Any misdemeanor; Crimes involving fraud, dishonesty, misrepresentation or money-laundering; Public corruption offenses | Discretionary | Permanent/Unspecified |
| UCCCA 14-5002 | Terminate family participation in the housing choice voucher program (conviction of any adult household member) (mandatory for methamphetamine/sex offenses) | Crimes of violence, including "person offenses"; Controlled substances offenses; Sex offenses | Mandatory/Automatic | Permanent/Unspecified |
| UCCCA 14-5004 | Terminate family participation in the housing choice voucher program (conviction of any adult household member) (discretionary for specified crimes of violence/drug offenses) | Crimes of violence, including "person offenses"; Weapons offenses; Controlled substances offenses; Sex offenses | Discretionary | Specific Term |
| UCCCA 14-5004 | Evict resident from household participating in the housing choice voucher program (permanent for methamphetamine/sex offenses) | Crimes of violence, including "person offenses"; Controlled substances offenses; Sex offenses | Discretionary | Permanent/Unspecified |
| UCCCA 14-5004 | Evict resident from household participating in the housing choice voucher program (2 years for specified violence/drug offenses) | Crimes of violence, including "person offenses"; Weapons offenses; Controlled substances offenses; Sex offenses | Discretionary | Specific Term |

that these consequences will be applied

⁴² See Travis, *supra* note 2; Uggen, *supra* note 9; Sohoni, *supra* note 2.

⁴³ See Jeffrey Fagan et al., *Reciprocal Effects of Crime and Incarceration in New York City Neighborhoods*, 30 Fordham Urb. L.J. 1551 (2002); Diana Rose & Todd Clear, *Incarceration, Reentry, and Social Capital: Social Networks in the Balance* (2002) (paper prepared for "From Prison to Home" Conference, U.S. Department of Health and Human Services).



that these unknown consequences represent a largely hidden disadvantage to the accused and may inhibit reentry.⁴⁶ If the UCCCA is effective, then there should be evidence that it promotes reentry in its jurisdictions. This could be assessed by matching offenders in states that have adopted the UCCCA against those in states that have not, and then evaluate their reentry opportunities and recidivism rates.

For instance, since the State of Vermont has passed the UCCCA, the NICCC can provide a platform from which to launch a prospective evaluation of the UCCCA. The NICCC provides a real-time database of all statutes, regulations, and rules containing collateral consequences. A researcher conducting a prospective study can download NICCC data to create waves of longitudinal data prior to UCCCA adoption, during UCCCA implementation, and following full implementation. At the time of this writing, Maryland, New York, and the U.S. Virgin Islands are considering passing the UCCCA.⁴⁷ The ABA has already coded and compiled all the collateral consequences for these states and any other comparison states researchers may wish to select. Since the NICCC represents a near exhaustive list of all statutes and regulations at the state level at the time the database is queried, researchers could use the NICCC to see the collateral consequences prior to passing the UCCCA and those that remain after full implementation. Of particular attention would be regulations that were not replaced by statute, what would remain would be to monitor implementation in these states and track relevant outcomes.

Researchers could also conduct field visits to see how the UCCCA is being applied in the courtroom and to what extent judges are providing relief for certain consequences that may inhibit reentry. Particular attention should be paid to the basis of those relief decisions, and to see if they comply with the principles of Risk-Need-Responsivity.

Furthermore, the NIJ-funded NICCC can be

paired with other Office of Justice Programs (OJP) data such as incarceration rates, probation, and parole data (following Sohoni 2013), and expenditures for the criminal justice system from the Bureau of Justice Statistics (BJS). By analyzing expenditures, researchers can determine if the UCCCA can diffuse policy benefits to other social service areas by facilitating some justice reinvestment. In other words, potential cost benefits may be estimated based on any possible reductions in recidivism (if any) that the researchers may find. Since these datasets exist and are publicly available, researchers would need only to collect the qualitative data mentioned above and assess outcomes for offenders who were provided relief under the UCCCA.

It is important that the effectiveness of the UCCCA be assessed. If deemed successful, this would provide further evidence regarding the facilitators of desistance as researchers would have a natural experiment evaluating the impact of removing some barriers to reentry for certain offenders while retaining those barriers on a matched group of offenders.

Conclusion

In this article, we have discussed collateral consequences as a separate and often unclear form of punishment for offenders that may prohibit key reentry vehicles. We then introduced the ABA and NIJ's NICCC, and illustrated its use for policymakers and practitioners in understanding how collateral consequences impact offenders, both on a case-by-case basis and in their jurisdiction. Finally, we have shown how this database may prove to be a valuable resource for researchers who are seeking to determine the impact of collateral consequences and the passing of the UCCCA.

The NICCC was mandated by Congress to fill a key information gap that would need to be addressed if states were to consider passing the UCCCA. But, as we have shown, the NICCC is a viable resource for all criminal justice

⁴⁶ See Uggen, *supra* note 9.

⁴⁷ Uniform Law Commission, *supra* note 35.



stakeholders and the accused in any state—regardless of its adoption of the UCCCA. We also explored the potential benefits of the NICCC to the research community.

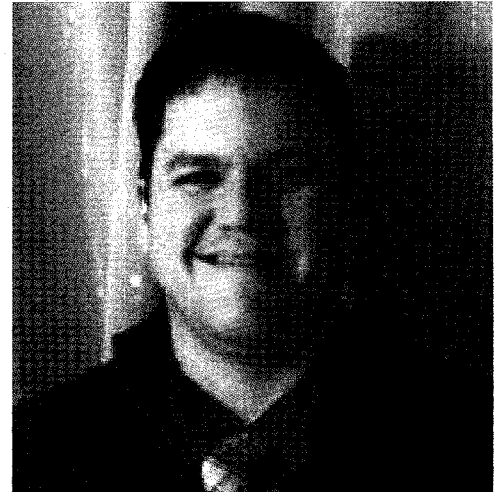
It is hoped that the NICCC will prove to be a valuable resource for policymakers to consider reforms, such as the Uniform Act, and may assist researchers as they began to explore this long overlooked area of criminal sanctions. But at the very least, the NICCC will be there to help ensure the accused in any state or territory understand the full ramifications of their potential conviction, and that all criminal stakeholders can work towards a just and appropriate outcome.



About the AUTHORS



Jonathan K. Gitlen (JD, George Washington University School of Law, 2010; BA, Emory University, 2006) was the Director and Lead Attorney for the National Inventory of Collateral Consequences of Conviction, a database made possible by a grant from the National Institute of Justice, Department of Justice, and materially supported by the Criminal Justice Section, American Bar Association, from May 2013 to January 2015.



Eric Martin (M.A., Political Science, Purdue University, B.A., History, Northern Michigan University) was drawn to NIJ by the opportunity to communicate and distill research findings to help inform criminal justice policy. Before joining NIJ, he was a crime analyst at a large metropolitan police agency. As a crime analyst, he often relied on the guidance of others, including NIJ publications and the NIJ Conference, to develop solutions for the day-to-day issues we faced. He feels honored by the opportunity to take part in the critical task of using knowledge translation to promote public safety. He feels that working for NIJ is a way to return the favor.

